



Tyson Foods, Inc.

November 8, 2010

NOV 09 2010

Water Docket,
Environmental Protection Agency, Mailcode: 28221T
1200 Pennsylvania Ave., NW.
Washington, DC 20460

RE: Docket ID No. EPA-R03-OW-2010-0736

To Whom It May Concern:

I write on behalf of Tyson Foods, Inc. (Tyson) regarding the Environmental Protection Agency (EPA) Draft Chesapeake Bay Total Maximum Daily Load (Draft TMDL), released for public comment on September 24, 2010, 75 *Fed. Reg.* 57776 (Sept. 22, 2010) (Docket Number EPA-R03-OW-2010-0736) (hereinafter Draft TMDL). As part of our Core Values, we strive to be stewards of the animals, land, and environment entrusted to us. Tyson believes this is evidenced through our cooperative efforts with the Bay states to further protect the Bay. These cooperative efforts include the signing of memorandum of agreements with several Bay states to provide training, funding for poultry litter transport, utilization of phytase in feed, and other proactive activities.

The Bay is an important and special resource that deserves protection. If developed in accordance with sound science, a TMDL is one of many steps that could enhance the protection of the Bay. Tyson believes the current Draft TMDL is being rushed without appropriate time to ensure full incorporation of good science, public policy review, public notice and comment, and legal analysis. Hence, the Draft TMDL will not likely accomplish the goals for which it has been developed because of the artificial and detrimental speed at which EPA is forcing this process forward without the necessary input and support of myriad stakeholders in the watershed. Tyson urges EPA to consider the following comments regarding the Draft TMDL:

1. Tyson renews its request for an extension of time for the public comment period. There are literally thousands of pages that still need to be reviewed. Forty five days is simply not enough time to thoroughly review the Draft TMDL and the State WIPs.
2. Tyson supports the use of Nutrient Management Plans (NMP) as a necessary component of environmentally sound land application practices. Moreover, Tyson believes that all sources of nutrients, including commercial fertilizer, should be land applied according to a NMP. The Bay states have passed laws and implemented regulations requiring that poultry litter utilized as an organic fertilizer be land applied pursuant to site-specific NMPs. EPA's TMDL does not appear to contemplate NMPs governing commercial fertilizer applications. EPA should encourage Bay states to develop NMP requirements for commercial fertilizer users.

NOV 08 2010

3. EPA has coerced the states into developing WIPs and in many instances improperly re-written these WIPs through its “backstop allocations.” The WIPs reflect the policy choices of the states of how to best utilize their own limited financial and regulatory resources to manage the land uses, sources and industries within their borders. Implementing the WIPs as unilaterally modified by EPA in the Draft TMDL will require substantial funding from the state and federal government. EPA appears to have proposed its Draft TMDL without securing the funding to implement these plans. It is important to understand the financial gap in funding the BMPs envisioned in the WIPs. Tyson recommends that a gap analysis be conducted, as well as a cost-benefit analysis of implementation of all WIPs.
4. The economic impact of the Draft TMDL should also be considered. Good public policy demands that the costs and benefits of various policy options be evaluated. The financial costs of various options should be considered when choosing an option. The Draft TMDL and EPA’s improper demands upon Bay states do not address or seem to consider the substantial adverse economic impacts of the policy choices made by EPA in the Draft TMDL.
5. The Chesapeake Bay Water Quality and Sediment Transport Model (WQSTM) documentation is not available for public review. The TMDL reference for the WQSTM indicates the document is in preparation and not available for review (USEPA, 2010, p. 12-3, Cerco, C. 2010. The Chesapeake Bay Water Quality and Sediment Transport Model.). It is not possible for stakeholders to review the Draft TMDL without the complete documentation of the WQSTM used in the development of the Draft TMDL.
6. The Scenario Builder tool, upon which EPA’s entire modeling exercise for the Draft TMDL is based, has not undergone a comprehensive, detailed, and objective peer review. The level of external or outside review conducted for the Scenario Builder tool is inadequate given the essential and important role the tool serves in providing nutrient load inputs to the watershed model. Furthermore, the Scenario Builder tool is not available for testing or review by third parties. Because this tool is not publicly available, stakeholders do not know and cannot test the many assumptions and calculations used by the Scenario Builder tool to generate nutrient load inputs to the watershed model for a given source.
7. On p. 3-23, of the Scenario Builder documentation (Brosch, 2010) the quantity of manure generated by poultry was revised in Table 3-1 from the values used in the previous version of Scenario Builder (Devereux, 2009, p. 3-19, Table 3-1). In general, the manure generation rate has increased slightly for different categories of poultry. No explanation is provided in the documentation to substantiate the accuracy of the manure generation figures or to justify the increase in manure generated per animal unit for poultry.

8. Tyson fully supports and incorporates herein by reference the Draft TMDL comments submitted by the Virginia Poultry Federation dated November 8, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Igli". The signature is written in a cursive, flowing style.

Kevin J. Igli

Senior Vice President and Chief Environmental, Health and Safety Officer
Tyson Foods, Inc.